IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 190/2007

Maria Rose Grade D'Souza alias Rose D'Souza. ..... Petitioner.

V/s.

The State of Goa (through the Chief Secretary) and others. ..... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Ryan Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. G. Bhonsule, Addl. Govt. Advocate for the respondents No.1 and 2.

Mr. A.N.S. Nadkarni, and Mr. D. Lawande, Advocates for the respondent No.3.

Mr. M.S. Sonak and Mr. Nikhil Vaze, Advocates for the respondents No.4, 6, 7 and 8.

Mr. V.A. Lawande, Advocate for the respondent No.5.

CORAM : R.M.S. KHANDEPARKAR &
R.S. MOHITE, JJ.

DATE : AUGUST 16, 2007.

P.C :

Heard. The petitioner challenges the selection and recruitment of the respondents No.4, 5 and 6 on the ground that they do not possess the

required experience in a responsible administrative capacity which is otherwise required in terms of the recruitment rules and particularly clause 3 of the eligibility criteria. The contention is that though the certificates of required experience were produced by the candidates, factually they did not have the required experience. While arguing the case on behalf of the petitioner, the learned Senior Counsel submitted that the respondents No.5 and 6 were merely in their capacity as senior most teachers, looking after day today work of their respective institution, in order to carry on the smooth functioning of those institutions and it was merely a stopgap arrangement as the Principals of the institutions were not available, either on account of being on leave or otherwise and, therefore, they were either incharge or officiating in the post of the Principal and their experience could not be equated with that of one "in a responsible administrative capacity" in terms of requirement of law for the purpose of the selection to the concerned post. It was further submitted that the respondents have not placed on record their appointment letters disclosing the duties which were assigned to them and, therefore, the contention sought to be raised on behalf of the petitioner cannot be said to be disputed or denied, which is sufficient for issuance of the rule and grant of stay of the selection of those respondents. It is also sought to be contended that the certificate of experience issued in relation to the respondent No.4 has not been issued by the competent authority and has been

issued only by the Principal of the School. According to the learned Senior Counsel, the competent authority is the Director of Education in that regard.

2. The learned Advocate General and the learned Counsel appearing for the respondents, on the other hand, placing reliance on the decision of the Apex Court in the case of ***State of Madhya Pradesh and another v. Laxmishankar Mishra,*** reported in AIR 1979 SC 979 submitted that the certificates produced by the candidates clearly disclose sufficient experience in terms of the recruitment rules and, therefore, there is no substance in the contention sought to be raised on behalf of the petitioner. In any case, according to the learned Counsel appearing on behalf of the respondents, the experience in the capacity as incharge or officiating in the post of Principal would be sufficient to consider the same as an experience in a responsible administrative capacity within the meaning of the term used in the said recruitment rules.

3. Though, repeatedly, our attention was drawn to various notings by the Director of Education, in support of the contention sought to be raised on behalf of the petitioner, it is pertinent to note that all those notings are on the basis that normally the administrative powers vest in the School Managing Committee and the experience of the Principal in relation to the administration

of the institution depends on the delegation of such power. The various notings by the Director of Education to which our attention was drawn by the learned Senior Counsel for the petitioner, nowhere refer to the actual experience of concerned respondents in their capacity either as incharge or officiating Principals in such institutions. Those notings are not based on the factual matrix of the experience gained by the said respondents while discharging their duties in the said posts. Obviously, such notings can be of no consequence or help to decide the point sought to be raised in the matter.

4. The provision of the recruitment rules undoubtedly provides that the candidates should have "10 years teaching experience in a High School/Higher Secondary School or a Teachers Training Institution including atleast 3 years experience in a responsible administrative capacity". Referring to the expression "responsible administrative capacity", it was sought to be contended that such an experience has to be in a capacity as a fullfledged Principal, and that the incharge Principal does not enjoy all the powers which a fullfledged Principal would enjoy under the statutory provisions. However, the learned Counsel has not been able to point out either in the Act or in the Rules made thereunder which would specify that any incharge Principal cannot be delegated with the powers to perform the functions which a fullfledged Principal can perform. The provisions of law apparently

disclose that the management of a school is primarily with the School Managing Committee and various functions which the Principal has to perform depend upon the delegation of such power to him. Being so, the experience in case of the Principal-incharge or officiating Principal would depend upon delegation of all or partial powers which are normally delegated to a regular Principal as the same has to be ascertained depending upon the facts of each case. Once the certificates produced by the candidates disclose that the candidates were appointed as incharge Principals of the institutions and there was nothing on record which could disclose that their powers regarding the functions of the Principals were restricted to particular duties, it cannot be said that such incharge Principals were performing only part of the administrative functions of the head of the institution. It cannot be disputed that the said respondents had produced the sufficient materials disclosing the required experience in a responsible administrative capacity so as to enable them to be considered to the post to which they have been selected. It is pertinent to note that the Apex Court in the matter of ***State of Madhya Pradesh and another v. Laxmishankar Mishra, (supra)*** while dealing with the scope of Rule 3(b) of the M.P. Local Authorities School Teachers (Absorption in Government Service) Rules, 1964, referring to the observations in its earlier decision in the matter of ***S.B. Patwardhan v. State of Maharashtra,*** reported in AIR 1977 SC 2051, it was held that emphasis

had to be on the experience gained while performing the duties or discharging functions assigned to the post of which the responsibility is bestowed upon such person. Undoubtedly, the observations were made taking into account the provision of the concerned rule in the M.P. Local Authorities School Teachers (Absorption in Government Service) Rules and those rules which provided that the person concerned should have worked on the post for a specified number of years. The rule in the case in hand states that a person must have 10 years teaching experience, including atleast 3 years experience in a responsible administrative capacity. What is relevant is the actual experience while functioning in the post in which the person is appointed. Obviously, therefore, it would depend on the facts of each case. Nothing is placed on record by the petitioner which could disclose that the experience gained by the respondents, during the time they were working as incharge or officiating Principals, cannot be said to be in a responsible administrative capacity. On the contrary, affidavit filed on behalf of the respondents clearly discloses that those respondents were assigned with various responsibilities which are normally assigned to a regular Principal of an institution. There is a categorical assertion in that regard on behalf of the respondents. There is no rejoinder to the said assertion on behalf of the respondents.

5. It is also pertinent to note that the concerned Rule speaks of experience as Principal of the Higher Secondary being desirable and not essential, which obviously discloses that even an experience in capacity as an incharge or officiating would be sufficient to construe as an experience in a responsible administrative capacity.

6. As regards the contention that the certificate issued in relation to the experience of the respondent No.4 was not issued by the competent authority, it is not the case of the petitioner that the respondent No.4 does not have actual experience as required under the law for his consideration for selection in the concerned post. At this stage, therefore, merely because the certificate was not issued by a competent authority and yet factually there were sufficient materials available before the authority to consider the said respondent to have satisfied the eligibility criteria in relation to the experience, we do not find it to be a fit case to interfere in writ jurisdiction.

7. For the reasons stated above, the writ petition fails and is, hereby, rejected.

R.M.S. KHANDEPARKAR, J.

R.S. MOHITE, J.

ssm